

CARLSMITH BALL LLP

DAVID LEDGER
ELYZE J. McDONALD
Bank of Hawaii Bldg., Suite 401
134 West Soledad Avenue, P.O. Box BF
Hagåtña, Guam 96932-5027
Tel No. 671.472.6813

Attorneys for Plaintiff
Mariana Express Lines, Ltd.

FILED
DISTRICT COURT OF GUAM
JUN 20 2007
MARY L.M. MORAN
CLERK OF COURT

IN THE DISTRICT COURT OF GUAM

07-00016

MARIANA EXPRESS LINES, LTD.,

Plaintiff,

vs.

FOREMOST FOODS,

Defendant.

CIVIL CASE NO. _____

VERIFIED COMPLAINT

1. The Court has jurisdiction pursuant to 28 U.S.C. Section 1333.
2. Venue is proper in this Judicial District pursuant to 28 U.S.C. Section 1391(b).
3. This is an admiralty and maritime action within the meaning of Fed. R. Civ. P. 9(h).
4. Plaintiff Mariana Express Line, Ltd. ("MELL") is a duly organized corporation lawfully conducting business in Guam providing international transportation of goods by sea.

5. Defendant Foremost Foods is on information and belief a duly organized corporation with a principal place of business on Guam. Foremost trades in certain commodities, including orange juice.

6. Prior to July 2004 MELL provided multiple instances of ocean freight services to Foremost facilitated by its Guam-based shipping agency, CTSI Logistics, Inc. ("CTSI"), and ocean-going vessels MELL has under charter.

7. In July 2004 Foremost arranged to purchase a cargo of frozen orange juice concentrate from its supplier of that product, Cargill Juice Trading BV ("Cargill"), located in Amsterdam, Netherlands.

8. Cargill warehouse workers packed the container and the container was then shipped to Foremost in Guam by way of ocean-going vessel via Hong Kong. An ocean Bill of Lading was issued for the shipment.

9. MELL was to provide the Hong Kong to Guam segment of the ocean transportation using a vessel it has under charter. Carriage from point of origin to Honk Kong was on another carrier.

10. During loading operations Cargill warehouse workers loaded the frozen juice concentrate into a general purpose, non-refrigerated container. MELL did not provide the container and had no involvement in the loading operation. Rather, the warehouse workers were Cargill employees.

11. The loaded container was then placed on a vessel bound for Hong Kong where it would be transshipped to MELL's Guam-bound vessel for delivery to Foremost. However, the transshipment did not occur because it was discovered that the frozen juice concentrate had thawed in the non-refrigerated container and was no longer fit for consumption. The frozen juice concentrate was condemned and disposed of at Hong Kong.

12. Cargill invoiced Foremost \$26,693.28 for the product, notwithstanding that Foremost did not receive it and that fault for loading frozen product into a non-refrigerated container rested entirely with Cargill.

13. Notwithstanding Foremost did not receive the product and that Cargill had loaded the frozen juice concentrate into a non-refrigerated container, Foremost paid Cargill \$26,693.28.

14. At the time of these events Foremost already owed MELL \$29,434.07 for ocean freight for past shipments MELL had delivered to Foremost without incident.

15. To recoup the \$26,693.28 it had voluntarily paid to Cargill for product never received, Foremost setoff that amount against the \$29,434.07 Foremost owed MELL for previously delivered shipments. MELL had provided all such previous shipments and ocean transportation under ocean bills of lading. Though MELL made repeated demands for payment of past due freight, Foremost, without legal cause or justification, refused to pay. Foremost's refusal to pay was and is wanton and willful and in utter disregard for MELL's right to be paid for previously provided ocean freight. Foremost used and is using its voluntary payment to Cargill as an "excuse" not to pay MELL.

16. In addition, Foremost refused and refuses to pay MELL the freight due on this particular shipment of frozen juice concentrate, \$2,218.00. Pursuant to the Bill of Lading, such freight is due and payable to MELL notwithstanding the cargo was condemned and disposed of and that Foremost may have a claim for loss of cargo. Though MELL made repeated demands for such payment, Foremost, without legal cause or justification, refused to pay. Foremost used and is using its voluntary payment to Cargill as an "excuse" not to pay MELL.

17. At Hong Kong MELL was assessed and paid certain charges and disposal fees for the disposal of the juice concentrate, which was condemned by Hong Kong authorities.

MELL also incurred other expenses related to the incident in amounts to be proven at trial.

18. Under the ocean bills of lading for this shipment as well as all previous shipments, Foremost is liable for costs and consequences arising out of the delay in paying, including interest which accrues until payment, and MELL's legal fees and costs.

COUNT I: BREACH OF MARITIME CONTRACT

19. MELL realleges paragraphs 1-18.

20. Each time MELL provided ocean transportation of goods to Foremost it was pursuant to an ocean bill of lading which is in essence a maritime contract for carriage of goods by sea.

21. Foremost's refusal to pay MELL the freight due is a breach of maritime contract and the proximate cause of MELL's losses and damages.

22. Foremost is liable to MELL for all damages stemming from such breach, including all costs and consequences arising out of the delay in paying, including interest which accrues until payment, and legal fees and costs.

23. MELL's total contract damages will be established according to proof at trial.

COUNT II: BREACH OF CONTRACT

24. MELL realleges paragraphs 1-23.

25. Each time MELL provided ocean transportation of goods to Foremost it was pursuant to a contract for carriage of goods by sea.

26. Foremost's refusal to pay MELL the freight due is a breach of contract and the proximate cause of MELL's losses and damages.

27. Foremost is liable to MELL for all damages stemming from such breach, including all costs and consequences arising out of the delay in paying, including interest which

accrues until payment, and legal fees and costs.

28. MELL's total contract damages will be established according to proof at trial.

COUNT III: UNJUST ENRICHMENT AND QUANTUM MERUIT

29. MELL realleges paragraphs 1-28.

30. Each time MELL provided ocean transportation of goods to Foremost it conferred a benefit on Foremost, for which Foremost must pay.

31. Foremost's refusal to pay for the ocean transportation services provided by MELL results in Foremost being unjustly enriched at MELL's expense, and is the proximate cause of MELL's losses and damages.

32. Foremost's refusal to pay for the ocean transportation services provided by MELL results in Foremost also being liable to MELL on the basis of *quantum meruit*.

33. The measure of Foremost's unjust enrichment and the amount of compensation due MELL on *quantum meruit* will be established according to proof at trial.

COUNT IV: CONVERSION - PUNITIVE DAMAGES

34. MELL realleges paragraphs 1 -33

35. Foremost's refusal to pay MELL for previously delivered shipments over which there is no dispute is bad faith wanton and willful conduct with utter disregard for MELL's right to be paid for services provided. Foremost is simply using its voluntary payment to Cargill as an excuse not to pay MELL money rightfully due and belonging to MELL.

36. Foremost's conduct constitutes conversion and is the proximate cause of MELL's losses and damages the amount of which will be shown at trial.

37. Foremost's conduct warrants imposition of punitive damages in an amount to be determined at trial

COUNT V: DECEIT AND / OR INTENTIONAL MISREPRESENTATION

38. MELL realleges paragraphs 1-36.

39. Foremost voluntarily paid Cargill \$26,693.28 for product it never received, notwithstanding Cargill being at fault for the loss.

40. On information and belief, Foremost made such payment to Cargill to preserve its business relationship with Cargill and to ensure that it did not lose Cargill as its source of frozen orange juice concentrate. Foremost then used this payment to Cargill as an excuse to not pay MELL. In other words, Foremost enhanced and maintained its business relationship with Cargill at MELL's expense, all the while falsely and intentionally claiming and misrepresenting that MELL was responsible for the loss of the orange juice.

41. Foremost's conduct as described above constitutes deceit and intentional misrepresentation and is the proximate cause of MELL's losses and damages, the amount of which will be shown at trial.

42. Foremost's conduct described above warrants an award of punitive damages in an amount to be determined at trial.

Wherefore, MELL prays for relief as follows:

1. Judgment on all counts against Foremost.
2. For general and consequential damages as are established at trial.
3. For contract damages including interest, consequential damages, and costs as are established at trial.
4. For attorneys fees and taxable costs.
5. For punitive damages in an amount to be determined at trial but in any event not less two times the actual and consequential damages.

6. For such other and further relief as the Court deems appropriate.

DATED: Hagåtña, Guam, June 20, 2007.

CARLSMITH BALL LLP

A handwritten signature in black ink, appearing to read "David Ledger", is written over a horizontal line.

DAVID LEDGER
ELYZE J. McDONALD
Attorneys for Plaintiff
MARIANA EXPRESS LINES, LTD.

DECLARATION UNDER 28 U.S.C SECTION 1746(1)

I, DESMOND AW am authorized by Mariana Express Line, Ltd. to make this declaration. My residence and place of business are located in the Republic of Singapore.

I have read the foregoing **VERIFIED COMPLAINT AGAINST FOREMOST FOODS** and, to the best of my knowledge, the information stated therein is true and correct.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 19 day of June 2007 at Singapore.



DESMOND AW

CIVIL COVER SHEET

07-00016

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

MARIANA EXPRESS LINES, LTD.

(b) County of Residence of First Listed Plaintiff

(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

David Ledger, Esq. CARLSMITH BALL LLP
Suite 401, Bank of Hawaii Building
134 West Soledad Avenue
Hagatna, Guam 96910 # (671) 472-6813

DEFENDANTS

FOREMOST FOODS

County of Residence of First Listed Defendant

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE
LAND INVOLVED.

Attorneys (If Known)

Unknown at this time

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
☐ 2 U.S. Government Defendant
☐ 3 Federal Question (U.S. Government Not a Party)
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)
** (Other) 28 USC Section 1333

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input checked="" type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition		

V. ORIGIN

(Place an "X" in One Box Only)

- ☒ Original Proceeding
☐ 2 Removed from State Court
☐ 3 Remanded from Appellate Court
☐ 4 Reinstated or Reopened
☐ 5 Transferred from another district (specify)
☐ 6 Multidistrict Litigation
☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

Brief description of cause:

Breach of marine contract for carriage of goods by sea; conversion

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

Contract damages/
tort damages

CHECK YES only if demanded in complaint:

JURY DEMAND:

☐ Yes ☒ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

June 20, 2007

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____